SUPREME COURT, U. S.

DEC 9 1974

MICHAEL RODAK JR., CLE

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-280

Arthur T. Bramble, Petitioner

vs.

William B. Saxbe, et al., Respondents

On Petition for Certiorari to Tenth Circuit Court of Appeals

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI

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I.

In Paragraph 1 of their Memorandum in Opposition, the Respondents argue that the Petitioner is without standing to raise before this Court the question of the propriety of the statutory scheme whereby the Petitioner's automobile was seized and forfeited to the United States. The Respondents' basic argument is set forth in Footnote 3 appearing on Page 3 of the Respondents' Memorandum.

The Respondents erroneously state that the Petitioner herein has relied upon the Administrative Procedure Act. The Record on Appeal currently lodged with the Tenth Circuit Court of Appeals in Denver explictly refutes that claim.

Further, the Respondents argue in said Footnote 3 of the Memorandum that the Petitioner lacked standing because the Tucker Act (28 U.S.C. § 1346 et seq.) does not confer upon lower Federal courts jurisdiction to entertain suits for injunctive or declaratory relief. That, of course, is true, However, as is set forth in the Petitioner's Petition and as is amply clear from the Record on Appeal and the pleadings contained therein, the Petitioner sought to invoke the jurisdiction of, inter alia, the Tucker Act for purposes of securing damages against the Respondents. See Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 29 L.Ed.2d. 619 (1971).

II.

In their argument that the Petitioner's claims set forth in his Petition are without merit, the Respondents advance two essential contentions. The first addresses itself to the heart of the Petitioner's claim, the second is predecated on factual error.

To the Petitioner's first contention the Respondents admit that the ordinary procedural safeguards afforded in criminal matters apply to forfeitures which violate the Fourth Amendment and that portion of the Fifth Amendment prohibiting the compulsion of self-incriminating testimony or evidence. However, simply stated, the Petitioner's position is that the protections afforded by the Due Process Clause of the Fifth Amendment should not be excluded from and excised out of the consideration of forfeitures instituted pursuant to a criminal statute, which statute is the very underpinning of the forfeiture itself. In Re Winship, 397 U.S. 358.

The second main contention of the Rspondents rests upon their understanding of this Court's decision in Calero-Toledo v. Pearson Yacht Leasing Co., 40 L.Ed.2d 452 (May, 1974). In this respect, the Respondents argue that the forfeiture proceeding is not a criminal prosecution of the property owner but rather that the property itself is forfeitable because of the unlawful use of the property regardless of the activity of the owner.

Nevertheless, the Calero-Toledo decision upholds the basic premise that a forfeiture statute, such as the one assailed by the Petitioner in the instant case, is, indeed, designed to enforce the proscriptions of a criminal statute. Most crucially, in Calero-Toledo, supra, the parties stipulated that

the means of conveyance involved therein, namely a yacht, had in fact been used in violation of the Puero Rican narcotics laws.

In the instant case, however, there is no evidence whatsoever that the Petitioner's automobile was used in violation of any law, federal or otherwise. Rather, the Petitioner has merely conceded arguendo the existence of probable cause for the Attorney General and or his agents to believe said unlawful use existed. The purpose for this concession arguendo was to bring the case within the scope of 28 U.S.C. §§ 2201 and 2202 defining existence of a case and controversy.

Therefore, it is respectfully submitted that the Respondents' Memorandum in Opposition is factually incorrect in the particulars outlined above. It is further respectfully submitted that the issue as joined by the Respondents as to whether or not the Due Process Clause of the Fifth Amendment applies to forfeitures instituted pursuant to an underlying criminal statute should be addressed and heard by this Court. Accordingly, the Petitioner urges that the Petition for Certiorari should, in the interests both of clarification of the law and justice, be granted.

Respectfully submitted:

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